IN THE HIGH COURT OF JUDICATURE, AT BILASPUR

C. R. NO. 112 /2004 Single Bench

APPLICANT:-
DEF.NO.1

Principal, Government Girls Higher Secondary School, Kusmi, Tahsil and Police Station – Kusmi, Distt. Surguja (Chhattisgarh)

VERSUS

NON-APPLICANTS:-
PLAINTIFF

1. Anhul Haque Ansari, S/o. Ali Hussain Ansari, aged about 42 years, occu. – agriculturist, caste-Musalman, resident of – Kusmi, Police Station and Tahsil – Kusmi, Distt. Surguja (Chhattisgarh)

DEFENDANT NO.2

2. State of Chhattisgarh, through : Collector, Surguja (Chhattisgarh)

DEFENDANT NO.3

3. Jhadu, son of Dhadha-aa, aged about 47 years, caste- Rajwar, occupation – agriculturist, resident of village – Kusmi, Tah. And Police Station – Kusmi, District Surguja (C.G.)

CIVIL REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE, 1908

(Against the order dated 31.03.2004, passed by the learned Additional Civil Judge, Class I, Ambikapur, District Surguja (Chhattisgarh) in M.J.C. No. 6/2001.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(32)

आदेश पत्रक

मामला क्रमांक C.R.112/04 **सन्** ~~200~~—

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	14.03.2005: -	

Shri B.P.Gupta, learned counsel for the applicant.
Shri Manoj Paranjpe, learned counsel respondent No.3.

This revision has been preferred against the impugned order passed by the Addl. District Judge, Ambikapur (C.G.) in M.J.C.No. 06/2001 and by which the application under Order 9 Rule 9 of the Code of Civil Procedure for restoration of the suit which was earlier dismissed on default has been allowed.

The plaintiff preferred an application for temporary injunction before the trial Court which was rejected and against which the plaintiff preferred a Miscellaneous Appeal before the Addl. District Judge and the A.D.J. by order dated 12.05.2000 rejected the appeal and directed the parties to appear on 14.07.2000 before the trial Court. However, the plaintiff was represented by his counsel on various dates thereafter and to demonstrate this, copies of the order sheet of Annexure P/1 has been filed. However, on 30.11.2000, the plaintiff did not appear nor his counsel appeared and the matter was passed over and when even in the third round nobody appeared for the plaintiff, the case was accordingly dismissed.

The plaintiff moved an application for restoration only on 03.09.2001 by filing application under Order 9 Rule 9 of C.P.C. and citing reasons that the plaintiff could not appear because his Advocate forgot to enter his case in his case diary for his appearance on 14.07.2000 and in

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(83)

आदेश पत्रक

मामला क्रमांक CR-112/04 **सन्** ~~200~~

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

support of his application, an affidavit of his Advocate namely Arvind Mehta was also filed.

The applicant/defendant replied to the application for restoration and denied the averments and stated that the plaintiff has been negligent and therefore the suit was directed to be dismissed and then, the same can not be restored by filing an application which is preferred after nine months. In support of the application for restoration, the applicant examined himself and his Advocate Arvind Mehta, whereas the non-applicant/defendant examined himself.

After hearing the parties, learned single judge allowed the application on the ground that misc.appeal was decided by the Appellate Court, record was sent, the parties were directed to appear on 14.07.2000 before the trial Court and since then, the applicant and his counsel engaged by him did not appear before the trial Court and that there is no authorization in the name of the Advocates appearing on behalf of the applicant before the trial Court by the plaintiff. The application was allowed on this ground also that the counsel for the applicant has himself admitted his bonafide mistake for non-appearance and for the mistakes of the counsel, parties should not suffer, the application for restoration was allowed by imposing a cost of Rs.500/-.

Learned counsel for the non-applicant submits that from the perusal of the order and the order sheet, reason for non-appearance is sufficient and Courts below while exercising its jurisdiction has allowed the application for restoration and the same can not be interfered with

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(34)

आदेश पत्रक

मामला क्रमांक CR/112/04 **सन्** ~~200~~

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

revisional jurisdiction and there is no jurisdictional error on the part of the Court while allowing the application.

On the other hand, learned counsel for the non-applicants submits that from the perusal of the impugned order it is evident that the applicant was himself negligent in prosecuting his case as he was not even aware of as to when he came to know about the dismissal and he is also not able to state whether he has any interest in prosecuting the case or not which is indicative of the fact that the applicant was negligent. Learned counsel for the non-applicants relying upon the Supreme Court judgement reported in *AIR 1981 SC, 1400* in the matter of *Rafiq and another Vs. Munshilal and another* and further in the matter of *Saraswati Bai & Others Vs. Kantabai & Others* reported in *2000(2) C.G.L.J., 184* and also on the decision delivered by the Supreme Court in the matter of *Ram Nath Sao alias Ram Nath Sahu and others Vs. Gobardhan Sao and others* reported in *2002 AIR SCW 976* submits that parties should not be made to suffer for the mistakes of their counsel and the matter should be adjudged on merits.

I have heard learned counsel for the parties and gone through the impugned order and I do not see any jurisdictional error on the part of the learned trial Court in allowing the application for restoration by the impugned order and particularly in view of the judgment cited above by learned counsel for the non-applicants, the revision application is dismissed.

Sd/-
Dhirendra Mishra
Judge

(पीछे देखिये)